IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1544 of 1996

For Approval and Signature:
***HONOURABLE* MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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MOHANSINH NANSINH CHAUHAN - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR DN PANDYA for Petitioner
MISS KIRAN PANDEY AGP for Respondents

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CORAM : HONOURABLE MS. JUSTICE R.M. DOSHIT
11th October, 2007

ORAL JUDGMENT

This is a petition preferred by the Licensee of a Fair Price Shop against the Order dated 22nd February, 1996 made by the State Government [Deputy Secretary to the Government of Gujarat, Food & Civil Supplies

Department] in Revision Application No. 129 of 1994. By the *impugned* order, the order of the lower authorities cancelling the license for the fair price shop given to the petitioner has been cancelled. The facts leading to the present petition are as under:–

In the year 1984, the petitioner was granted license under the Gujarat Essential Articles [*Licensing, Control & Stock Declaration*] Order, 1981 [hereinafter referred to as, "***the Order***"] for a fair price shop at village Dalwai Savli, Taluka Lunawada, District Panch Mahals.

On 20th April, 1985, the petitioner executed a power of attorney and by the said power of attorney, he appointed his brother Chauhan Ramsinh Nansinh to run the fair price shop and do the needful to run the said shop. On discovery of the said power of attorney by the concerned Mamlatdar, and based on the report made by the Mamlatdar, the District Supplies Officer, Godhara issued show cause notice dated 19th May, 1994 informing the petitioner that he had, in contravention of the terms and conditions of the license, transferred the fair price shop to his

brother and to show cause why the license should not be cancelled. The said show cause notice was answered by the petitioner on 7th June, 1994. In the said answer, the petitioner contended that in the year 1985 he was sick. The said power of attorney was granted to his brother to man the shop during the sickness of the petitioner. Since his recovery, he had been managing the fair price shop. The District Supplies Officer, Godhara by order dated 6th September, 1994 did not accept the explanation given by the petitioner. He held that the power given on 20th April, 1985 had been continued until 1994. Thus, it cannot be said to be a temporary arrangement. It was held that the petitioner had acted in contravention of the terms of the license. The license was ordered to be cancelled and the deposit was ordered to be forfeited. The said order was confirmed in appeal by the Collector, Panch Mahals by his order dated 25th October, 1994, and by the State Government in Revision Application by the above referred order dated 22nd February, 1996. Therefore, the present petition.

Mr. Pandya has assailed the impugned order. He

has relied upon the definition of the word "*Dealer*" occurring in the Order. He has submitted that, "*Dealer*" includes a representative, agent or a commission agent. The power of attorney granted by the petitioner to his brother, therefore, would not amount to transfer of business as held by the authorities below.

Mr. Pandya has also submitted that at the time of grant of license, the State Government maintains the record of nominees. In case of death of the licensee, such nominees are permitted to continue the business of fair price shop. If that can be done, there is no reason why petitioner could not have run the shop through the assistance of his elder brother. He has submitted that for the brief period of his illness in the year 1985, the petitioner could not run the shop. For the smooth functioning of the shop, the petitioner had given power of attorney to his brother. The said power of attorney was operated for a limited period alone and cannot amount to transfer of business.

As recorded hereinabove, all the authorities below have treated the said power of attorney as

transfer of business. It cannot be ignored that the said power of attorney given in the year 1984 continued to operate till the year 1994 until after the show cause notice was issued on 9th May, 1994. The petitioner cancelled the power of attorney in the month of June, 1994. Though the petitioner has maintained that except for the brief period in the year 1985, it was the petitioner who had been conducting the business, it is not supported by any evidence. In absence of any evidence to the contrary, there is no reason to believe that the power of attorney was not acted upon and the brother of the petitioner was not conducting the business. The petitioner did not show how the income from the fair price shop was appropriated. In the rejoinder affidavit, the petitioner has tried to improve his case by stating that the petitioner and his brother have the joint family and that the fair price shop was a joint family business. Since the petitioner had to look after the agriculture, his brother was assisting the petitioner in running the fair price shop. Evidently this is the after-though. In absence of any documentary evidence, the bare statement of

the petitioner cannot be believed. The inference drawn by the authorities below that through the power of attorney the petitioner had transferred his business to his brother cannot be said to be erroneous or illegal. There is no dispute that under the terms and conditions of license the transfer of business was not permitted. The petitioner did commit breach of the terms and conditions of the license. The impugned order cancelling the license cannot be interfered with.

For the aforesaid reasons, the petition is dismissed. Rule is discharged. *Interim* relief stands vacated. The parties will bear their own cost.

Mr. Pandya requests that the *interim* relief granted pending the petition be extended for a period of two months. The request is accepted. The *interim* relief shall continue for a period of two months from today.

{Ms. R.M Doshit, J.}

*Prakash**